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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5769-14T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,  
v.

RAFAEL FELIZ,

Defendant-Appellant.

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Submitted November 16, 2016 — Decided December 9, 2016

Before Judges Fuentes and Carroll.

On appeal from the Superior Court of New  
Jersey, Law Division, Essex County, Docket No.  
15-04-0765.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Daniel V. Gautieri, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Carolyn A. Murray, Acting Essex County  
Prosecutor, attorney for respondent (Andrew R.  
Burroughs, Special Deputy Attorney  
General/Acting Assistant Prosecutor, of  
counsel and on the brief).

PER CURIAM

Defendant Rafael Feliz appeals from the Law Division's August 7, 2015 order denying his motion for additional jail credits pursuant to Rule 3:21-8. We affirm.

Defendant is subject to community supervision for life (CSL) as a consequence of his 2004 conviction for second-degree sexual assault, N.J.S.A. 2C:14-2c(4). On September 10, 2013, defendant was arrested and charged with assaulting a law enforcement officer and related offenses, for which he was subsequently indicted. Pursuant to a plea agreement, on August 8, 2014, defendant pled guilty to Counts Three and Four of Essex County Indictment No. 14-06-1681, which charged him with fourth-degree aggravated assault, N.J.S.A. 2C:12-1b(5)(b), and fourth-degree throwing a bodily fluid at a law enforcement officer, N.J.S.A. 2C:12-13, respectively. On January 20, 2015, defendant was sentenced to concurrent one-year terms of probation. He was also awarded 334 days of jail credit for the time he spent in custody awaiting disposition of the charges, which encompassed the periods from September 10, 2013 to August 6, 2014, and August 12, 2014 to August 14, 2014.

Immediately following his sentencing on January 20, 2015, defendant was arrested and charged with violating his CSL by virtue of his conviction on Indictment No. 14-06-1681 (the instant offense). On April 9, 2015, an Essex County Grand Jury returned Indictment No. 15-04-0765 charging defendant with third-degree

violation of CSL, N.J.S.A. 2C:43-6.4d. Pursuant to a negotiated plea agreement, on May 4, 2015, defendant pled guilty to an amended charge of fourth-degree violation of CSL. As a factual basis for his plea, defendant acknowledged that he had been placed on CSL in 2004, and that he violated the conditions of his CSL when, on January 20, 2015, he was convicted and sentenced on the aggravated assault and throwing bodily fluid charges. On June 15, 2015, defendant was sentenced to the Essex County Jail for 364 days. The court awarded defendant 146 days of jail credit spanning the period from his arrest on January 20, 2015, to the date of sentencing.

On August 7, 2015, the court heard oral argument on defendant's application for an additional 334 days of jail credit. Specifically, defendant asserted he was entitled to credit for the time spent in custody on the aggravated assault and throwing bodily fluid charges. Relying on State v. DiAngelo, 434 N.J. Super. 443, 453 (App. Div. 2014), Judge Robert H. Gardner denied defendant's application. The judge reasoned:

Here, the violation of [CSL] is akin to the violation of probation issue in DiAngelo. Particularly, both types of violations stem from defendant's arrest on an unrelated matter. In accordance with the holding in DiAngelo, defendant in the present case should only receive jail credit from the time the violation charges were filed. Thus, defendant should not be entitled to any jail credit from

time-served in custody prior to January 20[,]  
2015.

Additionally, defendant in this present case was not incarcerated when the new charges [were brought]. He was sentenced, released and then arrested. The first indictment which led to the second indictment was completed as he was sentenced.

The judge granted defendant's application to be released on his own recognizance so as not to render the issue moot while the present appeal was pending.

Initially, this matter was scheduled to be placed on an Excessive Sentencing Oral Argument Calendar. See R. 2:9-11. We granted defendant's motion to transfer the appeal to the plenary calendar after full briefing to address defendant's contention that he is entitled to 334 days of additional jail credit. Defendant asserts, as he did before the trial court, that he is entitled to credit for the time spent in custody prior to his conviction on the underlying offenses that in turn served as the basis of the instant offense. In a single argument he states:

THE PROSECUTOR'S ARBITRARY ACTION IN SPLITTING [DEFENDANT'S] CHARGES INTO TWO SEPARATE INDICTMENTS, FILED TEN MONTHS APART, WAS THE TYPE OF 'HAPPENSTANCE' THAT STATE V. HERNANDEZ<sup>1</sup> WAS DESIGNED TO PREVENT, AND [DEFENDANT] MUST BE CREDITED ON THE [CSL] VIOLATION FOR TIME HE SERVED FOLLOWING HIS ARREST ON THE CRIMINAL CHARGES THAT CONSTITUTED THE BASIS FOR THAT VIOLATION.

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<sup>1</sup> 208 N.J. 24 (2011).

"A challenge to an award or denial of jail credits, as inconsistent with Rule 3:21-8, constitutes an appeal of a sentence 'not imposed in accordance with law.'" DiAngelo, supra, 434 N.J. Super. at 451 (quoting State v. Rippy, 431 N.J. Super. 338, 347 (App. Div. 2013)), certif. denied, 217 N.J. 284 (2014). A trial judge's "interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." State v. McKeon, 385 N.J. Super. 559, 567 (App. Div. 2006) (quoting Manalapan Realty v. Manalapan Tp. Comm., 140 N.J. 366, 378 (1995)). Thus, we review legal issues de novo. DiAngelo, supra, 434 N.J. Super. at 451.

Rule 3:21-8 (the Rule) provides: "The defendant shall receive credit on the term of a custodial sentence for any time served in custody in jail . . . between arrest and the imposition of sentence." In the past, our courts interpreted the Rule to permit jail credits only for "'confinement . . . attributable to the arrest or other detention resulting from the particular offense.'" Hernandez, supra, 208 N.J. at 36 (quoting State v. Black, 153 N.J. 438, 456 (1998)). Hernandez, however, significantly changed the law relating to jail credits available to defendants who have been charged and detained on multiple offenses at the same time.

In Hernandez, the Court held that "a defendant in jail pending trial in one county subject to a detainer on charges in another

county must receive jail credits under Rule 3:21-8 for that time on both charges if ultimately sentenced on both." Id. at 49. This pronouncement follows the Court's clear interpretation of the Rule that "defendants are entitled to . . . credits against all sentences 'for any time served in custody in jail or in a state hospital between arrest and the imposition of sentence' on each case." Id. at 28 (quoting R. 3:21-8). Thus, the Rule requires a defendant to receive jail credit for time spent in presentence custody. Id. at 48-49. Presentence credit begins upon arrest until the first sentencing. See id. at 50. ("[O]nce the first sentence is imposed, a defendant awaiting imposition of another sentence accrues no more jail credit under Rule 3:21-8.").

The Hernandez decision did not address the application of jail credits in the context of a violation of probation (VOP). However, in DiAngelo, we recently addressed that issue to determine whether a defendant is entitled to jail credit for time in custody between the filing of VOP charges and the imposition of a custodial sentence for violating probation (specifically, when the time in custody occurs simultaneously with detention on new charges). In DiAngelo, supra, 434 N.J. Super. at 443, the defendant, while on non-custodial probation, was arrested and detained on new criminal charges. While in jail, she was served with a VOP statement of charges recommending revocation of her probationary sentence and

imposition of a custodial term for the prior conviction. Id. at 446-47. The defendant remained in custody until sentencing, at which point she requested jail credits on the VOP sentence corresponding to the period of custody from arrest on the new charges to the date of the VOP sentencing. Ibid. The State opposed the request, arguing that jail credit only applied against the sentence on the new charges because defendant was arrested solely on the new offense and the custodial term for the VOP was related to, and part of, the initial sentence for her prior offense. Ibid. The trial judge agreed with the State, concluding the VOP sentence was not a sentence to which the Rule applied. Ibid.

In deciding DiAngelo, we recognized "the overarching public policy" requiring "consistency in awarding jail credits to achieve fairness in sentencing to all[,]" id. at 460, and concluded "[t]he serving of the [VOP] statement of charges to a defendant who is confined triggers the award of jail credits for the period of pre-adjudication confinement against the VOP sentence and the sentence for the new offense." Id. at 461.

In DiAngelo, the VOP statement of charges was issued while the defendant was in jail on new charges. DiAngelo, supra, 434 N.J. Super. at 449. Importantly, we rejected the defendant's assertion that jail credits began to accrue upon her arrest for

the new charges, reasoning that credit should not be awarded for a period of time preceding the filing of the VOP statement of charges. Instead, we concluded "[t]he [] appropriate date for credit against the VOP sentence is the date the VOP statement of charges issued." Id. at 462.

Here, defendant was not in custody when the violation of CSL charge was filed, and he had already been sentenced on the assault and throwing bodily fluids charges. Based on the rationale espoused in Hernandez, and by analogy to DiAngelo, we conclude jail credits began to accrue on January 20, 2015, the date the CSL violation was issued and defendant was arrested and incarcerated on that charge. We hold that, having previously been sentenced on the assault and bodily fluids charges, and having received the full 334 days of credit accumulated while in custody on those charges, defendant is not entitled to those same additional jail credits on the instant offense.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION